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No. 00-1737

IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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STATEMENT PURSUANT TO RULE 29.6

Petitioners' Rule 29.6 Statement was set forth at page ii of the Petition for a Writ of Certiorari, and there are no amendments to that Statement.

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ARGUMENT

I. Stratton does not dispute that the Ordinance precludes anonymous political discourse.

a. To avoid the issue of anonymity, Stratton recasts the question presented.

Rather than address the question this Court has agreed to review, Stratton poses and discusses an issue not presented in this case. In so doing, Stratton fails to address a major issue before the Court — how does its Ordinance, that requires one to reveal his or her name to the Mayor to obtain a permit, not violate the First Amendment protection accorded to anonymous political pamphleteering or discourse?

Stratton recasts the question presented to focus on the protection of "an unwilling listener at his home." *Brief for Respondents* at i. Jehovah's Witnesses are not challenging and have never challenged the right of an unwilling listener to shield himself from all or certain unwanted messages.

Stratton's residents can post a "No Trespassing" sign and keep all away from their door. Residents can post a "No Solicitation" sign pursuant to section 116.07 of the Ordinance and "decide for themselves what speech they are willing to hear on their property." *Brief for Respondents* at 9. Even without a sign, residents can simply tell a caller to leave. Use of any of these measures amply protects the "unwilling listener."

In focusing on the "unwilling listener," Stratton attempts to deflect attention from the question actually presented for review — whether its Ordinance violates the First Amendment protection accorded anonymous political

discourse. Stratton fails to address the effect of the Ordinance, which requires a person to surrender anonymity by disclosing his or her name, address, description of the message, and the organization he or she is affiliated with to the office of the Mayor prior to going from door to door. Ord. § 116.03(b)(1), (2), (3) (MBA 4a). In the process, the right of a speaker to engage in anonymous political discourse has been eliminated.

Stratton does not explain how disclosure of one's name, address, and organizational affiliation to the Mayor (which is kept as a public record) can somehow coexist with the protection accorded core political speech — the "respected tradition of anonymity in the advocacy of political causes." *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 343 (1995). Rather, the Village asserts that "[t]here is no generalized constitutional right to anonymity." *Brief for Respondents* at 22. This assertion rests on nothing more than the dissents in *McIntyre* and *Talley v. California*, 362 U.S. 60 (1960), and ignores their holdings, which protect anonymous political discourse.

Since the Ordinance compels name disclosure, it is a content-based regulation of speech, which requires the application of strict scrutiny. Stratton fails to address this or to contend that the Ordinance can survive that exacting examination.

b. The Ordinance and the permit require identity disclosure at the resident's door.

The Village concedes that its Ordinance does indeed require disclosure of one's identity at the door:

> [The Ordinance] does not require a person engaging in door-to-door political discourse to disclose his identity **until** the resident requests identification.

Brief for Respondents at 27 (emphasis added).

> Disclosure of a speaker's identity can only be **compelled** by the homeowner in the exercise of his own rights, or by a police officer in furtherance of official duties.

Brief for Respondents at 29-30 (emphasis added).

The plain language of the permit utilized by the Village indicates that the applicant's name appears on it. The permit says:

> PERMIT TO CANVASS TO SOLICIT, ETC.
>
> In accordance with the provisions of Section 116.04 of the Codified Ordinances of the Village of Stratton, Ohio, the Mayor of the Village of Stratton, Ohio has issued to **the above Applicant** a Permit, authorizing the Applicant to canvass, solicit, peddle, hawk . . . .

(Defendants' Trial Exhibit 36, Blank 'Permit to Canvass to Solicit, Etc.' Form, Tr. 86, J.A. 248a) (emphasis added).

The Sixth Circuit recognized that a speaker's name would appear on the permit and therefore would be revealed to the resident at his door:

> As we see it, individuals going door-to-door to engage in political speech are not anonymous by virtue of the fact that they reveal a portion of their identities — their physical identities — to the residents they canvass. In other words, the ordinance does not require canvassers going door-to-door to reveal their identities; instead, the very act of going door-to-door requires the canvassers to reveal a portion of their identities.

> While the ordinance requires political canvassers to reveal the remainder of their identities, i.e., their names, we do not believe that requirement rises to the level of impinging on First Amendment protected speech.

Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 240 F.3d 553, 563 (CA6 2001) (J.A. 76a-77a).

In *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999), this Court was virtually unanimous in agreeing that compulsory name disclosure at the point of one-on-one communication violates constitutional protections accorded anonymous political discourse. To avoid the application of *Buckley*, the Village relies on material outside the record to contend that the permit does not in fact contain the applicant's name. *Brief for Respondents* at 32 n.1 (referring to non-record letter).

Assuming, *arguendo*, that the permit does not contain the speaker's name, then the permit scheme is ineffectual. The resident would not know who the speaker is even if shown the permit. A nameless permit could be transferred from person to person or copied and distributed to others.

In any event, the Ordinance states: "The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter." Ord. § 116.04 (MBA 5a). This language would allow this or any future Mayor to require that the applicant's name be placed on the permit. The Ordinance's requirement of compulsory name disclosure is incompatible with the protection accorded anonymous political pamphleteering or discourse.

II. The overbreadth doctrine is applicable because the Ordinance's impact on Petitioners is different from its impact on those desiring to engage in anonymous political discourse.

Rather than being the gratuitous wholesale attack as characterized by Stratton, the application of the overbreadth doctrine is well warranted to strike down its criminalization of unlicensed anonymous political discourse.

Stratton fails to appreciate "'the transcendent value to all society of constitutionally protected expression.'" *Los Angeles Police Dep't v. United Reporting Publishing Corp.*, 528 U.S. 32, 38 (1999) (quoting *Gooding v. Wilson*, 405 U.S. 518, 521 (1972)). Stratton fails to realize that "First Amendment challenges to statutes based on First Amendment overbreadth . . . [are] 'deemed necessary because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression.'" *Id.* (quoting *Gooding*, 405 U.S. at 521).

The use of this doctrine for purposes of facial invalidation is proper since this is a "case in which the government is prohibiting a speaker from conveying information that the speaker already possesses." *Los Angeles Police Dep't v. United Reporting Publishing Corp.*, 528 U.S. at 40. Stratton prohibits the anonymous speaker from conveying a political message, thereby creating more than a theoretical "possibility that protected speech will be muted." *Bates v. State Bar of Arizona*, 433 U.S. 350, 380 (1977).

The Village attempts to justify this suppression of expression by relying upon *Hill v. Colorado*, 530 U.S. 703 (2000). First, it argues that "[a]nonymity of the petition

circulator in core political speech activities stands no differently than Petitioners." *Brief for Respondents* at 36. Stratton claims, thereby, to fall within *Hill*'s statement that "Petitioners have not persuaded us that the impact of the statute on the conduct of other speakers will differ from its impact on their own sidewalk counseling." *Hill v. Colorado*, 530 U.S. at 732. The Village is mistaken.

Jehovah's Witnesses have never advocated an interest in maintaining anonymity at a resident's door. Even if the Court were to uphold the Ordinance, if he or she chose to do so, one of Jehovah's Witnesses could obtain a permit and preach from door to door. There would be no legal impediment to doing so. In contrast, one who wanted to engage in anonymous political speech could not obtain a permit and preach his message in an anonymous fashion from door to door. The very act of obtaining a permit destroys his anonymity. He would be banned from advocating his political message anonymously from door to door in Stratton. Thus, the 'plain sweep' of Stratton's Ordinance causes a "real" and "substantial" impact on pure speech. *Id.*

This ban on anonymous political discourse negates the Village's contention that the Ordinance is directed to place, private property, not speech. Contrary to Colorado's statute at issue in *Hill*, which did not "'ban' any messages, . . . literature, or oral statements [but] merely regulate[d] the places where communications may occur," *id.* at 731, Stratton bans, as opposed to "merely regulates," door-to-door anonymous political discourse. In so doing, it entirely forecloses this venerable and traditional means of one-on-one communication.

As this Court noted in *Hill*, under Colorado's statute "absolutely no channel of communication is foreclosed. No speaker is silenced. And no message is prohibited."

Id. at 734. In Stratton, anonymous door-to-door advocacy is foreclosed. Anonymous speakers are silenced. Anonymous messages are prohibited.

The Village's reliance on *Hill* is also misplaced in that Colorado's statute dealt only with the protection of the unwilling listener, as opposed to Stratton's, which seeks to encumber all listeners:

> It is . . . important . . . to recognize the significant difference between state restrictions on a speaker's right to address a willing audience and those that protect listeners from unwanted communication. This statute deals only with the latter.

Id. at 715-16.

The majority of Stratton's population are a willing audience in that they did not avail themselves of the Ordinance's provisions pursuant to section 116.07, restricting door-to-door communication.[1] *Brief for Respondents* at 29 ("the resident who does not file a No Solicitation Registration Form with the Mayor implicitly invites all communication to the residence"). Interestingly, among the 21 filings of owners or occupants who did restrict access are seven individuals associated with the Village government, among them the Mayor, his former and current Village clerks, the Chief of Police, and three Village council members. All seven indicated they did not want visits from Jehovah's Witnesses. (Defendants' Trial Exhibits 34f, 34g, 34h, 34i, 34k, 34m, 34o, No Solicitation Registration Form, Tr. 86, J.A. 182a-211a). Stratton's scheme revokes the implicit invitation of

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1. Of Stratton's 278 residents, only 32 have filed a total of 21 No Solicitation Registration Forms with the Village. (Mayor John Abdalla, Tr. 91; Defendants' Trial Exhibits 34a-u, No Solicitation Registration Form, Tr. 86, J.A. 167a-229a).

those presumably willing residents who did not file with the Village and in the process restricts their right to hear information without the knowledge of the government.

As this Court recognized in *Hill*, the protection of speech to a willing audience has a solid foundation. "Private citizens have always retained the power to decide for themselves what they wish to read, and within limits, what oral messages they want to consider." *Hill v. Colorado*, 530 U.S. at 734. In Stratton, a private citizen does not have the right to decide for himself to receive anonymous political messages at his home. By restricting the content of messages, Stratton places itself outside *Hill*.

Stratton is confused by Jehovah's Witnesses' assertion that the Ordinance also impermissibly abridges religious speech. That assertion reinforces the substantial overbreadth of the Ordinance.

Jehovah's Witnesses have consistently argued that the Ordinance is also facially unconstitutional in that it impermissibly encumbers religious speech. The Witnesses submit that the claim that religious speech is unconstitutionally abridged by the Ordinance's substantial overbreadth is "fairly included" within the question presented. Their claim is not just one of "technical overbreadth" in that the Ordinance violated the rights of others, but also "included the contention that the [O]rdinance was 'overbroad' in the sense of restricting more speech than the Constitution permits, even in its application" to Jehovah's Witnesses. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 381 n.3 (1992). Just as the Ordinance need not reach core political speech to achieve stated municipal interests, it need not reach pure religious speech either. Therefore, the issue is properly presented for review, and application of the overbreadth doctrine is properly applied to hold the Ordinance facially unconstitutional.

III. The Court has never subjected speech unconnected to the solicitation of funds to a registration-identification scheme.

The Village states that in *Martin v. City of Struthers*, 319 U.S. 141 (1943), the Court "concluded that the rights of the unwilling listener to be secure in the privacy of his home trumped a speaker's interest in pursuit of religious or political activity. *Id.* at 157" and expressly authorized a "registration mechanism that required establishment of identity and authority to act on behalf of a cause." *Brief for Respondents* at 14. The Village fails to identify the first statement as being to Justice Reed's dissent in *Martin*, which was quite opposite the Court's holding. The second statement mischaracterizes *Martin*'s dicta with respect to the permissible scope of municipal registration schemes. In relying on dissent and mischaracterization of dicta, the Village exposes the lack of authority for the Ordinance's prior restraint on the dissemination of ideas. The Court has never subjected pure speech to the pre-condition of a registration-identification scheme.

Martin struck down a prohibition on door-to-door distribution of literature, holding that "[t]he dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors." *Id.* at 147. Moreover, as this Court recently observed in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 200 n.20 (1999), it was only in dictum that the *Martin* Court "noted that 'a stranger in the community' could be required to establish his identity and authority to act for the cause he purports to represent." Further, in making this statement, the *Martin* Court was quoting *Cantwell v. Connecticut*, 310 U.S. 296 (1940):

> Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the

> community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

Id. at 306. *Cantwell* clearly spoke to identification only with reference to speech connected with the solicitation of funds.

If Stratton had written its Ordinance to regulate only the solicitation of funds, this case would not be before this Court. Jehovah's Witnesses were not going from door to door seeking funds, but to speak to residents about the Bible and offer, at no cost, Bible-based literature. Such an ordinance would not apply to them, nor to individuals seeking to engage in any political discourse unconnected to seeking funds.

The Court has previously considered the extent to which the government may require identification as a pre-condition to the exercise of First Amendment rights. In striking down a statute requiring a labor union organizer to identify himself to the State in writing before making a public speech, the Court held:

> If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order.

Thomas v. Collins, 323 U.S. 516, 540 (1945).

The Court then noted the difference between pure speech and speech connected with the solicitation of funds:

> Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present, and which it was said the State might regulate, in Schneider v. State[2] . . . and Cantwell v. Connecticut.

Id. at 540.

In holding that the state's registration requirement was an impermissible prior restraint on pure speech activities, the Court noted that no solicitation of funds was involved. *Id.* at 533. The Court also rejected the state's argument, which is remarkably similar to Stratton's, that the "statute 'is a registration statute and nothing more,' and confers only 'ministerial and not discretionary powers' upon" the state official. *Id.* at 526. As the Court aptly noted:

> The restraint is not small when it is considered what was restrained. The right is a national right, federally guaranteed. There is some modicum of freedom of thought, speech and assembly which

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2. In this context, *Schneider* spoke to speech connected with the solicitation of funds: "the common type of ordinance requiring some form of registration or license of hawkers or peddlers." *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939).

> all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty.

Thomas v. Collins, 323 U.S. at 543.

Neighbor-to-neighbor speech unconnected to the solicitation of funds falls within that 'modicum of freedom of thought and speech' that must not be restrained or impeded.

Stratton impermissibly attempts to criminalize core speech that is uttered without prior registration. This it simply cannot do. "Where core First Amendment speech is at issue, the State can assess liability for specific instances of deliberate deception, but it cannot impose a prophylactic rule requiring disclosure even where misleading statements are not made." *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 803 (1988) (Scalia, J., concurring in part and concurring in judgment).

IV. The Ordinance imposes an impermissible prior restraint.

By focusing on the "unwilling listener," Stratton attempts to deflect attention from what the Ordinance actually is — an impermissible prior restraint of expression. The Village contends that "[n]o prior restraint argument is available to Petitioners because no message is prohibited." *Brief for Respondents* at 31. Besides being an incorrect statement of

law, its contention ignores the fact that anonymous door-to-door political discourse is prohibited. Such prior restraint does not pass constitutional muster.

"[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). In *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), Justice O'Connor (joined by Justices Stevens and Kennedy) noted: "While '[p]rior restraints are not unconstitutional *per se* . . . [a]ny system of prior restraint . . . comes to this Court bearing a heavy presumption against its constitutional validity.'" *Id.* at 225 (citing *Lovell v. City of Griffin*, 303 U.S. 444 (1938), and *Cantwell v. Connecticut*, 310 U.S. 296 (1940)). The Village fails to overcome this "heavy presumption" against the validity of a scheme that imposes a prior restraint upon speech. It fails to explain why this Court, for the first time in American history, should endorse a requirement that a publisher (Watchtower) obtain government approval before circulating its literature without charge. *See Talley v. California*, 362 U.S. 60, 64 (1960) (citing *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) ("There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.'")).

It is clear that Stratton applies the Ordinance to the distribution of literature. It has specifically applied its Ordinance against Watchtower, one of the largest publishers in the world. (Defendants' Trial Exhibit 24, Letter from Frank Bruzzese to Richard Moake (Sept. 9, 1998), Tr. 86, J.A. 162a-166a). At the time of the district court hearing, the average biweekly printing of the *Watchtower* magazine was

22,103,000 in 128 languages, and *Awake!* was 19,617,000 in 81 languages. (Plaintiffs' Trial Exhibits 6N and 6O, Tr. 86). Over 98,600,000 copies of *The New World Translation of the Holy Scriptures* have been printed in multiple languages (Plaintiffs' Trial Exhibit 6C, Tr. 86), and 62,650,000 copies of the Bible study aid *Knowledge That Leads to Everlasting Life* have been published in 126 languages. (Plaintiffs' Trial Exhibit 6E, Tr. 86). The material published by Watchtower is distributed by individual Jehovah's Witnesses in their public ministry (Robert Ciranko, Tr. 18, J.A. 312a-313a), and is left with residents free of charge (Robert Ciranko, Tr. 21, J.A. 316a).

The Village cites no authority that would entitle it to abridge the freedom of the press through its permit scheme. The Court has consistently struck down attempts to subject the press to pre-publication licensing. These holdings have confirmed the First Amendment's prohibition of "government restraints upon expression." *Thomas v. Chicago Park District*, __ U.S. __, No. 00-1249, 2002 WL 46757 at 3. "[T]he core abuse against which [the First Amendment] was directed was the scheme of licensing laws implemented by the monarch and Parliament to contain the 'evils' of the printing press in 16th- and 17-century England." *Id.* Such protection safeguards free expression, which is, as Justice Cardozo stated, "the matrix, the indispensable condition, of nearly every other form of freedom." *Palko v. Connecticut*, 302 U.S. 319, 327 (1937).

The Court has always been reluctant to uphold prophylactic attempts to regulate all speech. Rather, it has preferred to uphold prosecutions of speech that actually cause harm. Here, Stratton punishes speech that is disseminated without its permission, even if that speech lies at the core of the First Amendment. This it cannot do.

> Prior restraints are particularly anathematic to the First Amendment, and any immunity from

> punishment subsequent to publication of given material applies A fortiori to immunity from suppression of that material before publication.

Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 598 (1976) (Brennan, J., concurring).

The Village argues that the Ordinance is not an impermissible prior restraint because the Mayor has no discretion in issuing permits. It fails to comment, however, on the fact that its Mayor evidently thinks he has such discretion. He has acted as if he had discretion in granting after-hour permits and would use his discretion to deny permits to those unaffiliated with an organization. *Brief for Petitioners* at 27.

The Village also fails to address the Court's holding in *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 769 (1988), that language similar to Stratton's, impermissibly permitted unbridled discretion:

Stratton	Lakewood
Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired. Ordinance § 116.03(b)(6) (MBA 4a).	[S]uch other terms and conditions deemed necessary and reasonable by the Mayor.

To argue away any appearance of discretion, the Village wants this Court to credit the Mayor's testimony that he pre-signs his name on the permit. *Brief for Respondents* at 32. Yet, should this Court not also credit the testimony that people move to Stratton with the understanding that they would not

be bothered by Jehovah's Witnesses (Tammy Tuckosh, Tr. 77, J.A. 362a); that he understands no one in the Village wants to listen to Jehovah's Witnesses (Mayor John Abdalla, Tr. 129, J.A. 410a); and that Jehovah's Witnesses are preaching their "so-called gospel"? (Mayor John Abdalla, Tr. 128, J.A. 408a).

Stratton is completely silent as to this discriminatory animus expressed towards Jehovah's Witnesses. It does not explain why this should not at least give the Court pause in sanctioning a prior restraint scheme with this Mayor so intimately involved. The purpose of anti-licensing laws was to keep a weapon of suppression from the hands of a possible censor. Mayor Abdalla has successfully suppressed the "so-called gospel" of Jehovah's Witnesses for three years. Do we really need to wait until he attempts to censor the "so-called" message of an opposing political party before this censorial weapon is removed from his hands?

Sadly, in attempting to justify its scheme, Stratton devalues the status of First Amendment interests in the hierarchy of American values. Rather than view door-to-door political discourse as the lifeblood of a vibrant democracy, the Village views such speech as something "residents will *endure* in the privacy of their homes" and which happens after "*intrusion* upon private property." *Brief for Respondents* at 9, 25 (emphasis added). Apart from expressing its distaste for the free exchange of thought, the Village never explains why it must ban and regulate speech to protect its residents from fraud and invasion of privacy. It does not address why prosecuting laws already on the books would not sufficiently address its interests. It fails to comment on why regulating only commercial speech would not sufficiently address its interests.

Stratton also ignores the limited scope of its expert's testimony. Associate Attorney General Helen MacMurray, section chief of the Ohio Attorney General's Consumer Protection section, testified that the Ordinance would be "helpful" in addressing Stratton's interests in fraud prevention:

> Q. [D]o you have an opinion whether an ordinance such as the one that you have before you would be helpful in combatting consumer fraud and related consumer problems in door-to-door solicitations?
>
> A. Yes, I have an opinion.
>
> Q. What is that opinion?
>
> A. My opinion is it would indeed be helpful.

(Helen MacMurray, Tr. 216, J.A. 467a).

> Q. Is it fair to state that your opinion is limited to the fact that this ordinance would be helpful in the prevention of fraud and the protection of the elderly?
>
> A. That's exactly what I'm saying.

(Helen MacMurray, Tr. 228, J.A. 478a).

Is "helpful" to become the litmus test for determining the constitutionality of laws that abridge speech? If so, a curfew prohibiting anyone from being on the street from 4:00 p.m. to 9:00 a.m., which Ms. MacMurray also felt would be "helpful," would be constitutional. (Helen MacMurray, Tr. 228-229, J.A. 479a). Ms. MacMurray's testimony

undoubtedly was constrained by the fact that the Ordinance has no mechanism to verify the information an applicant presents to obtain a permit. (Helen MacMurray, Tr. 228, J.A. 478a). Her testimony also was limited by the fact that there are no statistics to support her opinion about the effect of registration on the investigation of consumer or elderly fraud. (Helen MacMurray, Tr. 240, J.A. 488a). Further, the Village ignores the study Ms. MacMurray produced for this case, which indicated only two incidents of door-to-door problems in a four-county area surrounding Stratton over a two-year period. One involved no loss of money, the other dealt with cancellation rights for cable TV. (Defendants' Trial Exhibit 40, Statistical study prepared for Ohio Assistant Attorney General Helen MacMurray dated July 14, 1999, Tr. 86, Lodging 296a).

In its amicus brief, the State of Ohio interjects concerns of door-to-door violent crime. This interest was never asserted by Stratton. Ohio's own Assistant Attorney General MacMurray provided no testimony, statistics, or evidence that the permit scheme would deter violent crime. Rather than address why one who would commit a crime at a residence would be deterred by a permit scheme, Ohio references cases establishing the irrelevancy of a permit scheme to address crime. *See, e.g., State v. Manis*, No. CA99-09-085, 2000 WL 1050971 (Ohio Ct. App. July 24, 2000) (perpetrators burglarized residence after calling to make sure no one was home); *State v. Huda*, No. 66268, 1994 WL 530866 (Ohio Ct. App. Sept. 29, 1994) (perpetrator not involved in door-to-door canvassing or soliciting); *State v. Steffen*, 509 N.E.2d 383 (Ohio 1987) (perpetrator, who would have qualified for permit under Stratton-type scheme, murders only person who would have seen permit; even in absence of permit scheme, perpetrator was apprehended next day). Ohio also references an article that makes Jehovah's Witnesses' point — Stratton should enact a

properly tailored ordinance to regulate commercial solicitation: "When someone shows up at the door asking for money . . . people should call [sic] police, who have a list of registered groups allowed to solicit money." Kristi E. Swartz, *Fake Jehovah's Witnesses Steal Woman's $600*, Herald Sun, Jan. 5, 1999, at C1.

Stratton fails to explain the necessity of regulating access to private property. It cites no authority supporting its contention that standards applicable to governmental regulation of access to its own property gives it license to regulate access to its citizens' property. In addition, a time, place, and manner analysis is not applicable to a prior restraint scheme:

> [A] state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets. . . . The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited.

Cantwell v. Connecticut, 310 U.S. 296, 304 (1940).

This Court should not sanction Stratton's attempt to place a burden on receptive residents' access to information by licensing pure speech. There may come a day when a municipality must regulate pure speech and press delivered at residents' doors in furtherance of its compelling interests. This is not such a day nor such a case.

CONCLUSION

Stratton's city fathers posit a chilling version of American life — the press unable to disseminate literature without governmental permission; residents deprived of the opportunity to decide for themselves what message to hear without government pre-approval or knowledge; police authorized to check "the papers" of those desiring to engage in the free communication of ideas; and citizens deprived of their right to engage in anonymous door-to-door political discourse. Mayor Abdalla will then be able to enforce and guarantee his claim that people move to Stratton because they know they will not be bothered by Jehovah's Witnesses. By whom will the residents not be bothered tomorrow?

Jehovah's Witnesses respectfully request that this Court hold Stratton's Ordinance facially unconstitutional and reverse the decision of the Sixth Circuit Court of Appeals.

Respectfully submitted,

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